



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,396	03/23/2004	Isao Miyachi	250786US3X	2344

22850 7590 01/11/2007  
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
----------

COLLADO, CYNTHIA FRANCISCA

ART UNIT	PAPER NUMBER
----------	--------------

3618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/806,396

Applicant(s)

MIYACHI, ISAO

Examiner

Cynthia F. Collado

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 27, 2006 has been entered. Applicant's submission filed on November 29, 2006 has been entered. Claims 11-12 remain in the application for consideration and the application provided remarks for reconsideration. Claims 1-10 are cancelled. The indicated allowability of claims 13-23 are withdrawn in view of the newly discovered reference(s) to Kobayashi et al (US Patent No 5,671,820). Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-23 recites "positional relationship member" is unclear. Appropriate action is required. The positional relationship member is not set forth specifically in the specification and drawings, so examiner cannot specifically identify this element.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-23 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al (US Patent No.5, 671,820).

Regarding claim 11, Kobayashi discloses a lower traveling body (fig 1, element 1), an upper rotating body rotatably mounted on the lower traveling body, the upper rotating body having an upper frame, an engine and a radiator (fig 1, element 3) and (fig 3, element 10 and 14), a guard cover pivotally provided to cover at least the radiator(fig 1, element 6), a positional relationship member arranged in the vicinity of the guard cover and a radiator support provided on the upper frame, wherein positional relationship member and the guard cover are mounted to the upper rotating body via the radiator support (column 5, lines 20-30)

Regarding claim 12, Kobayashi discloses wherein the positional relationship member is a radiator duct extending between the radiator and the guard cover so as to guide cooling air passing the guard cover to the radiator (column 3, lines 8-15).

Regarding claim 13, Kobayashi discloses wherein the positional relationship member is a canopy support mounted to the radiator support and passing through an opening in the guard cover (col 1, lines 48-60).

Regarding claim 14, Kobayashi discloses a lower traveling body (fig 1, element 1), an upper rotating body rotatably mounted on the lower traveling body, the upper rotating body having an upper frame an engine including a muffler (column 7, lines 28-32), a bonnet pivotally provided to cover at least the engine (fig 1, element 6), a positional relationship member arranged in the vicinity of the bonnet and a mounting column provided on the upper frame, wherein the bonnet and the positional relationship member are mounted to the upper rotating body via the mounting column (column 5, lines 20-30).

Regarding claim 15, Kobayashi discloses wherein the positional relationship member is a side panel arranged on one lateral side at the rear part of an opening hood for covering the back side of the engine (fig 1, element 6B)

Regarding claim 16, Kobayashi discloses wherein the positional relationship member is a muffler cover covered by the bonnet and provided to cover the muffler (column 7, lines 28-32).

Regarding claim 17, Kobayashi discloses a radiator provided on the upper rotating body and a radiator support provided on the upper frame (fig 1, element 3), the radiator support provided on one lateral side at a rear part of the upper frame and the mounting column on a lateral side of the rear part of the upper frame opposite the radiator support (fig 3, element 14), and a seat stand mounted to the radiator support and to the mounting column, wherein the seat stand extends between the radiator support and to the mounting column (fig 1, element 7) also (column 5, lines 20-29).

Regarding claim 18, Kobayashi discloses an oil tank and a seat stand, wherein the oil tank and the seat stand are all mounted to the upper supporting body via the radiator support (column 5, lines 38-43).

Regarding claim 19, Kobayashi discloses a bonnet pivotally provided to cover at least the engine, a muffler cover covered by the bonnet and provided to cover the muffler, and mounting column provided on the upper frame, wherein the bonnet and the muffler cover are mounted to the upper supporting body via the mounting column (fig 6).

Regarding claim 20, Kobayashi discloses a seat stand mounted to the upper supporting body via the mounting column, and fixed cover panel mounted to the upper supporting body via the mounting column (column 5, lines 56-67) also (column 6, lines 1-6).

Regarding claim 21, Kobayashi discloses a radiator support mounted to the upper rotating body at a side of the engine opposite the mounting column (fig 2, elements 14 and 10).

Regarding claim 22 and 23, Kobayashi discloses a radiator, a guard cover pivotally provided to cover at least the radiator, and a radiator duct extending between the radiator and the guard cover so as to guide cooling air passing the guard cover to the radiator, wherein the radiator, the radiator duct and the guard cover are all mounted to the upper supporting body via the radiator support (column 6, lines 25-42).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia F. Collado whose telephone number is (571)2728315. The examiner can normally be reached on mon-fri 8-4.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*CFC*  
CFC

*1/1/06*

~~J. ALLEN SHRIVER~~  
~~PRIMARY EXAMINER~~  
*[Signature]*  
J. ALLEN SHRIVER  
PRIMARY EXAMINER